cipal case. *Anderson* v. *Thunder Bay River Boom Co.*, 57 Mich. 216, 23 N. W. 776; *Winchester* v. *City of Stevens Point*, 58 Wis. 350, 17 N. W. 3. *Contra*, *Cobb* v. *Illinois & St. L. R. & Coal Co.*, 68 Ill. 233.

UNFAIR COMPETITION — INTERFERENCE WITH MAKING OF CONTRACT — WHEN JUSTIFIED — INTERFERENCE INCIDENTAL TO GENERAL RESTRAINT OF TRADE. — A carpenter's union consistently refused to handle any lumber manufactured in an "open shop." Plaintiff, an "open shop" manufacturer, seeks to enjoin this boycott so far as it affects his product. *Held*, that no injunction will issue. *Paine Lumber Co., Ltd.*, v. *Neal*, 50 N. Y. L. J. 1497 (U. S. D. C., So. Dist. of N. Y., November, 1913).

For a discussion of some phases of the "secondary boycott," see NOTES, p. 478.

USURY — PURGING OBLIGATION OF THE TAINT OF USURY — EFFECT OF NEW CONSIDERATION. — To secure an usurious loan, the defendant placed on his land a first mortgage, which by the statute of usury was a valid lien only to the amount actually lent. In consideration of the surrender of this security and the permission to place a large first mortgage on the land, the defendant gave to the plaintiff a second mortgage which still secured a sum larger than that actually lent and executed a release of all claims for usury taken. The plaintiff sues to foreclose this second mortgage. *Held*, that he is entitled to a decree for the full amount secured, without deductions for usury. *Blohm* v. *Hannan*, 88 Atl. 622 (N. J.).

It is well settled that the taint of an originally usurious obligation affects all securities in the form of notes and mortgages into which the usurious element can be traced. *Cobe* v. *Guyer*, 237 Ill. 568, 86 N. E. 1088; *Nicrosi* v. *Walker*, 139 Ala. 369, 37 So. 97. By mutual agreement, of course, the parties may exclude all usurious items from the transaction and substitute a new security covering only the amount lawfully due . *Vermeule* v. *Vermeule*, 95 Me. 138, 49 Atl. 608; *Phillips* v. *Columbus City Building Ass'n*, 53 Ia. 719, 6 N. W. 121; *Sanford* v. *Kunz*, 9 Ida. 29, 71 Pac. 612. Such an arrangement may even validate the original securities. *Warwick* v. *Dawes*, 26 N. J. Eq. 548. *Contra*, *Miller* v. *Hull*, 4 Den. (N. Y.) 104. So long as usurious elements remain, however, the mere intervention of new obligors or obligees does not remove the taint. *Bridge* v. *Hubbard*, 15 Mass. 96; *Fitzpatrick* v. *Apperson's Executrix*, 79 Ky. 272. But a renewal of the original security given to a holder for value without notice is held to be purged of usury. *Cuthbert* v. *Haley*, 8 T. R. 390; *Kent* v. *Walton*, 7 Wend. (N. Y.) 257. The authorities also generally agree that the taint of usury will not extend to an obligation founded upon new consideration, unless the arrangement is a device to evade the statute of usury. Thus a new loan subsequent to a *bonâ fide* payment of the usurious debt will be free from usury. *Hoopes* v. *Ferguson*, 57 Ia. 39, 10 N. W. 286. *Cf. Shinkle* v. *First National Bank of Ripley*, 22 Oh. St. 516. And the usury does not affect a new security given to the usurer by one who has contracted with the debtor to pay the debt. *Scott* v. *Lewis*, 2 Conn. 132; *Cramer* v. *Lepper*, 26 Oh. St. 59. *Cf. Smith* v. *Young*, 11 Bush. (Ky.) 393. See WILLISTON'S WALD'S POLLOCK, CONTRACTS, 275. But the surrender of the usurious obligation as between the original parties could not be new consideration within this rule without practically nullifying the statute of usury. *King* v. *Perry Ins., etc. Co.*, 57 Ala. 118. In the principal case, however, the subordination of the original mortgage appears to satisfy the conception of new consideration, and the decision is undoubtedly correct.

WATERS AND WATERCOURSES — FLOOD WATERS — NON-RIPARIAN OWNER'S RIGHT TO FLOWAGE. — The defendant erected an embankment on its land and thus cut off water which, during flood times, overflowed from a watercourse

and crossed over the defendant's land to the non-riparian land of the plaintiff. The plaintiff, being thus deprived of the fertilizing effect of the water, seeks damages. *Held*, that he may recover. *Thompson* v. *New Haven Water Works*, 86 Atl. 585 (Conn.).

For a discussion of the principles involved, see NOTES, p. 476.

BOOK REVIEWS.

CERTAINTY AND JUSTICE. By Frederick R. Coudert. New York and London: D. Appleton and Company. 1913. pp. vii, 320.

This book is a series of eleven essays, nine of them contributed to various legal periodicals during the last ten years, and two now printed for the first time. Despite the circumstances of their first appearance, the essays constitute a well-considered and homogeneous body of thinking on the topic indicated by the general title. Mr. Coudert brings to the age-long discussion of the importance of certainty in the administration of justice an abundance of apt and interesting illustrative material, gathered from a wide experience as a practitioner, a well-trained and thoughtful reflection not only upon his own experience and that of the American bar, but also upon a familiarity with the law and legal machinery of continental Europe and particularly of France. Indeed one of the most obvious morals of the book is the value which an acquaintance with the modern civil law of continental Europe possesses for the active practitioner, and even more for the thoughtful jurist and legal reformer. Mr. Coudert is all of these, and his contribution to the problems of legal reform is everywhere enhanced in importance by his familiarity with the achievements of the other great legal system of Western civilization.

The first three essays of the book set forth its central thesis — that our day demands a greater flexibility in the administration of justice than has been possible to the courts under a somewhat undiscriminating devotion to the ideal of certainty as formulated in the rule of *stare decisis*. He favors what he would call a liberal interpretation of both the unwritten and the written law, and especially the provisions of the Constitution. He is willing to trust the task of this interpretation to a thoroughly trained and professionally high-minded bench and bar, learned not only in the more definite legal lore which constitutes their professional equipment, but also in the traditions of their calling and the ideals therein formulated. In the hands of such a bench and bar a decreasing regard for precedent *qua* precedent might well be replaced by an increasing familiarity with the social and economic ends which the administration of justice is, after all, only a means of achieving. Mr. Coudert is no doubt right in believing that professional training and idealism, giving us an adequately prepared bench and bar, are our surest guaranties of an efficient administration of justice. On the other hand, it seems unfortunate that his analysis of the fields in which certainty is desirable and those in which the very nature of the subject-matter makes rigid rules unworkable has not been more thorough-going. The real antithesis in juristic thought is not between certainty and justice, but between the field of rule and that of discretion. Justice sometimes demands a certain rule; at other times it demands the possibility of a judicial discretion regulated only by a proper training in the processes of judicial thinking, and by a proper education preparing the administrator to appreciate the social ends which will be affected by the wisdom or unwisdom of